



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:340. Laboratory certification.

6 RELATES TO: KRS [~~224.10-420, 224.10-440,~~]224.60-110, [~~KRS-~~]224.60-130, [~~KRS-~~
7 224.60-140

8 STATUTORY AUTHORITY: KRS 224.60-130(1)(a)

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a) requires the
10 establishment of criteria to certify laboratories that contract with owners or operators of
11 petroleum storage tanks to perform analytical testing. The statute requires that owners and
12 operators have all required analytical testing performed by a certified laboratory to be eligible for
13 Petroleum Storage Tank Environmental Assurance Fund (PSTEAF) reimbursement. This
14 administrative regulation establishes the requirements for certification and the parameters and
15 methods on which certification shall be granted.

16 Section 1. Applicability. Owners and operators seeking reimbursement from the
17 PSTEAF for analytical testing shall utilize~~[A sample required by 401 KAR Chapter 42 shall be~~
18 ~~submitted to]~~ a laboratory certified pursuant to this administrative regulation. This administrative
19 regulation shall apply to analytical testing performed on or after October 1, 1999. An owner or
20 operator of a petroleum storage tank who fails to comply with this requirement shall not be
21 reimbursed by the cabinet for costs related to analytical testing~~[and corrective action].~~

Section 2. Certification Requirements. (1) A laboratory shall demonstrate current accreditation by:

(a) The American Association for Laboratory Accreditation [~~for the "Kentucky Underground Storage Tank Laboratory Accreditation Program"~~]; or

(b) Any state approved to accredit environmental laboratories [~~to perform the following tests~~] in accordance with National Environmental Laboratory Accreditation Program requirements and standards.[:

1. ~~Benzene, toluene, ethylbenzene, xylene, and methyl tertiary butyl ether (BTEX, MTBE) in soil and water;~~

2. ~~Polynuclear aromatic hydrocarbons in soil and water;~~

3. ~~Total lead in soil and water;~~

4. ~~Toxicity characteristic leaching procedures (TCLP) for:~~

a. ~~Metals;~~

b. ~~Volatiles;~~

c. ~~Acid/base/neutral;~~ and

d. ~~Pesticides and herbicides;~~

5. ~~Ignitability;~~

6. ~~Paint filter test;~~ and

7. ~~pH.]~~

(2) A laboratory seeking certification from the cabinet shall submit a completed ["Application for Laboratory Certification["], DEP 6074[, (January 2006)].

(a) The application shall include proof of accreditation as described in subsection (1) of this section; and

1 (b) The applicant shall retain a copy of the form for their own records.

2 (3) The cabinet shall reimburse an eligible[a] petroleum storage tank owner or operator
3 for the cost of a laboratory analysis if the:

4 (a) Analysis is conducted in accordance with the established parameters and methods;

5 (b) Analysis is required by written directive by the cabinet and performed in accordance
6 with 401 KAR Chapter 42; and

7 (c) Laboratory is certified by the cabinet to conduct that analysis.

8 Section 3. Maintaining Laboratory Certification. (1) A certified laboratory shall maintain
9 accreditation by the American Association for Laboratory Accreditation or the National
10 Environmental Laboratory Accreditation Program for the duration of certification.

11 (2) When a certified laboratory's accreditation, in accordance with Section 1 of this
12 administrative regulation, is renewed, or otherwise changes in status, the certified laboratory
13 shall submit updated documentation of the accreditation status to the cabinet within thirty (30)
14 days.

15 (3) A laboratory holding valid certification from the USTB issued prior to October 1,
16 2011 shall not be required to submit a new Application for Laboratory Certification, DEP 6074.
17 In order to maintain certification status, the certified laboratory shall comply with subsection (2)
18 of this section.

19 (4) If a certified laboratory fails to maintain certification in accordance with this section,
20 the laboratory shall be required to submit an Application for Laboratory Certification, DEP 6074,
21 in accordance with Section 2 of this administrative regulation.~~[Renewal of Certification. A~~
22 ~~certification shall be valid for two (2) years from the date of issuance by the cabinet. To apply~~
23 ~~for renewal an applicant for renewal shall submit:~~

(1) ~~An ["Application for Laboratory Certification["], DEP 6074[, (January 2006)]; and~~

(2) ~~Updated documentation demonstrating accreditation by the:~~

(a) ~~American Association for Laboratory Accreditation; or~~

(b) ~~National Environmental Laboratory Accreditation Program.]~~

Section 4. Loss of Certification. (1) The cabinet may revoke ~~[or suspend]~~ a certification if the applicant:

(a) ~~[Negligently, incompetently, recklessly, or intentionally violates any provision of this administrative regulation, or any state, federal, or local statute, regulation, code or standard concerning the performance of analytical testing;~~

~~(b)]~~ Obtains the certification through fraud or misrepresentation; or

~~(b)[(e)]~~ Knowingly or intentionally submits materially false information to owners, operators, contractors, or the cabinet.

(2) ~~[A certified laboratory shall maintain accreditation by the American Association for Laboratory Accreditation or the National Environmental Laboratory Accreditation Program for the duration of certification.~~

~~(3)]~~ The cabinet shall, within ten (10) days of a revocation~~[this]~~ determination, notify ~~the[a]~~ laboratory, in writing, of the ~~[suspension or]~~ revocation of certification.

~~(3)[(4)]~~ A laboratory seeking to dispute revocation may~~[or suspension shall]~~ appeal that decision pursuant to KRS 224.10-420, 224.10-440, 401 KAR 42:320, and ~~[401 KAR]~~ 100:010.

Section 5. Extensions. (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation.

1 (2) The extension request shall be submitted in writing and received by the Underground
2 Storage Tank Branch of the Division of Waste Management prior to the deadline.

3 (3) The cabinet may grant an extension, if the cabinet determines that an extension would
4 not have a detrimental impact on human health or the environment.

5 Section 6[5]. Incorporation by Reference. (1) "Application for Laboratory Certification",
6 DEP 6074, (April 2011) is incorporated by reference.~~[The following material is incorporated by~~
7 ~~reference:~~

8 (a) ~~"Application for Laboratory Certification", DEP 6074, (January 2006); and~~

9 (b) ~~The American Association for Laboratory Accreditation, "Kentucky Underground~~
10 ~~Storage Tank Laboratory Accreditation Program Requirements", (September 2005).]~~

11 (2)(a) This material may be inspected, copied, or obtained, subject to applicable
12 copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor
13 ~~[Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard]~~, Frankfort, Kentucky
14 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

15 (b) This material is also available~~[, excluding state holidays, and may also be obtained]~~
16 on the Division of Waste Management's Web site~~[page located]~~ at <http://waste.ky.gov/ust>
17 [www.waste.ky.gov].

401 KAR 42:340 approved for filing.

4/14/11
Date

Leonard K. Peters
Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the certification requirements for laboratories performing analytical testing for petroleum storage tank owners and operators who are seeking reimbursement from the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF).

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish certification requirements for laboratories.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the statute by establishing certification requirements for laboratories that perform analytical testing for petroleum storage tank owners and operators that seek reimbursement from the PSTEAF.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the effective administration of the statute by providing certification requirements for laboratories.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment changes the existing administrative regulation by allowing for A2LA or NELAP accreditation. It also removes language for suspension of certification. The amendment also clarifies the requirements for maintaining accreditation and laboratory certification. The amendment clarifies the revocation language for certified laboratories.

(b) The necessity of the amendment to this administrative regulation:

The amendment is necessary to reduce the burden on certified laboratories. They will no longer have to apply for certification each time their accreditation changes or renews.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment conforms to the content of the authorizing statute by establishing requirements for laboratory certification.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment will assist in the effective administration of the statute by reducing the paperwork burden for both the certified laboratory and the Underground Storage Tank Branch.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The laboratories that will be affected by this amendment are those that perform analytical test for petroleum storage tank owners and operators who seek reimbursement from the PSTeAF. There are currently 43 certified laboratories.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

There will be no additional requirements for laboratories that are currently certified. Laboratories that do not hold current certification will be required to submit an Application for Laboratory Certification, including copies of their accreditation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

It will not cost certified laboratories any additional funding to comply with this amendment. They are already required to obtain and maintain accreditation status.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The benefit of complying with this amendment is that laboratories will be used by petroleum storage tank owners and operators who seek reimbursement from the PSTeAF for analytical testing.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

The Underground Storage Tank Branch already implements the laboratory certification program. This amendment should not cost any additional funds to implement.

(b) On a continuing basis:

The Underground Storage Tank Branch already implements the laboratory certification

program. This amendment should not cost any additional funds to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Funding for implementation and funding of this administrative regulation includes tank fees, PSTeAF, and federal grants from US EPA.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No increase in fees will be necessary to fund the implantation of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Tiering is not applied. All laboratories that apply for certification have to meet the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 42:340

Contact Person: Cassandra Jobe

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No _____

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Division of Waste Management will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 224.60-130(1)(a)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This amendment will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This amendment will not generate any revenue.

(c) How much will it cost to administer this program for the first year?

This amendment will not cost the Division of Waste Management any additional funding.

(d) How much will it cost to administer this program for subsequent years?

This amendment will not cost the Division of Waste Management any additional funding.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

Detailed Summary of Material Incorporated by Reference

I. This administrative regulation incorporates by reference the "Application for Laboratory Certification", DEP 6071, (April 2011). This document is to be submitted by laboratories applying for certification to do analytical testing for petroleum storage tank owners and operators who want to be reimbursed from the Petroleum Storage Tank Environmental Assurance Fund.

This document consists of 2 pages.